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HOUSE BILL 139

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Max Coll

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING FOR THE SEIZURE, FORFEITURE AND DISPOSAL OF CERTAIN OFFENDERS' MOTOR VEHICLES; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-39 NMSA 1978 (being Laws 1978, Chapter 35, Section 261, as amended) is amended to read:

"66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED-- PROVIDING PENALTIES. --

A. [~~Any~~] A person who drives a motor vehicle on [~~any~~] a public highway of this state at a time when his privilege to do so is suspended or revoked and who knows or should have known that his license was suspended or revoked is guilty of a misdemeanor and shall be charged with a violation

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1 of this section. Upon conviction, the person shall be  
2 punished, notwithstanding the provisions of Section 31-18-13  
3 NMSA 1978, by imprisonment for not less than four days or more  
4 than three hundred sixty-four days or participation for an  
5 equivalent period of time in a certified alternative sentencing  
6 program, and there may be imposed in addition a fine of not  
7 more than one thousand dollars (\$1,000). When a person pays  
8 any or all of the cost of participating in a certified  
9 alternative sentencing program, the court may apply that  
10 payment as a deduction to any fine imposed by the court.

11 B. Notwithstanding any other provision of law for  
12 suspension or deferment of execution of a sentence, if [~~the~~] a  
13 person's privilege to drive was revoked for driving while under  
14 the influence of intoxicating liquor or drugs or a violation of  
15 the Implied Consent Act, upon conviction under this section,  
16 that person shall be punished by imprisonment for not less than  
17 seven consecutive days and [~~shall be fined~~] a fine of not less  
18 than three hundred dollars (\$300) or not more than one thousand  
19 dollars (\$1,000) and the fine and imprisonment shall not be  
20 suspended, deferred or taken under advisement. No other  
21 disposition by plea of guilty to any other charge in  
22 satisfaction of a charge under this section shall be authorized  
23 if the person's privilege to drive was revoked for driving  
24 while under the influence of intoxicating liquor or drugs or a  
25 violation of the Implied Consent Act. [~~Any~~] A municipal

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1 ordinance [~~prohibiting~~] that prohibits driving with a suspended  
2 or revoked license shall provide penalties no less stringent  
3 than provided in this section.

4 [~~B.-~~] C. In addition to any other penalties imposed  
5 pursuant to the provisions of Subsection A of this section,  
6 when a person is convicted pursuant to the provisions of [~~this~~  
7 ~~section~~] that subsection or a municipal ordinance that  
8 prohibits driving on a suspended or revoked license, the motor  
9 vehicle the person was driving shall be immobilized by an  
10 immobilization device for thirty days, unless immobilization of  
11 the motor vehicle poses an imminent danger to the health,  
12 safety or employment of the convicted person's immediate family  
13 or the family of the owner of the motor vehicle. The convicted  
14 person shall bear the cost of immobilizing the motor vehicle.

15 D. In addition to any other penalties imposed  
16 pursuant to the provisions of Subsection B of this section, a  
17 motor vehicle operated in violation of Subsection B of this  
18 section shall be subject to seizure, forfeiture and disposal.  
19 The provisions of the Forfeiture Act shall apply to the  
20 seizure, forfeiture and disposal of the motor vehicle.

21 [~~E.-~~] E. The division, upon receiving a record of  
22 the conviction of any person under this section upon a charge  
23 of driving a vehicle while the license of the person was  
24 suspended, shall extend the period of suspension for an  
25 additional like period, and if the conviction was upon a charge

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1 of driving while a license was revoked, the division shall not  
2 issue a new license for an additional period of one year from  
3 the date the person would otherwise have been entitled to apply  
4 for a new license. "

5 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,  
6 Chapter 139, Section 54, as amended) is amended to read:

7 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING  
8 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE  
9 OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

10 A. It is unlawful for a person who is under the  
11 influence of intoxicating liquor to drive a vehicle within this  
12 state.

13 B. It is unlawful for a person who is under the  
14 influence of any drug to a degree that renders him incapable of  
15 safely driving a vehicle to drive a vehicle within this state.

16 C. It is unlawful for a person who has an alcohol  
17 concentration of eight one hundredths or more in his blood or  
18 breath to drive a vehicle within this state.

19 D. Aggravated driving while under the influence of  
20 intoxicating liquor or drugs consists of a person who:

21 (1) has an alcohol concentration of sixteen  
22 one hundredths or more in his blood or breath while driving a  
23 vehicle within this state;

24 (2) has caused bodily injury to a human being  
25 as a result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or  
2 (3) refused to submit to chemical testing, as  
3 provided for in the Implied Consent Act, and in the judgment of  
4 the court, based upon evidence of intoxication presented to the  
5 court, was under the influence of intoxicating liquor or drugs.

6 E. ~~Every~~ A person under first conviction pursuant  
7 to this section shall be punished, notwithstanding the  
8 provisions of Section 31-18-13 NMSA 1978, by imprisonment for  
9 not more than ninety days or by a fine of not more than five  
10 hundred dollars (\$500), or both; provided that if the sentence  
11 is suspended in whole or in part or deferred, the period of  
12 probation may extend beyond ninety days but shall not exceed  
13 one year. Upon a first conviction pursuant to this section, an  
14 offender may be sentenced to not less than forty-eight hours of  
15 community service or a fine of three hundred dollars (\$300).  
16 The offender shall be ordered by the court to participate in  
17 and complete a screening program described in Subsection H of  
18 this section and to attend a driver rehabilitation program for  
19 alcohol or drugs, also known as a "DWI school", approved by the  
20 bureau and also may be required to participate in other  
21 rehabilitative services as the court shall determine to be  
22 necessary. In addition to those penalties, when an offender  
23 commits aggravated driving while under the influence of  
24 intoxicating liquor or drugs, the offender shall be sentenced  
25 to not less than forty-eight consecutive hours in jail. If an

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1 offender fails to complete, within a time specified by the  
2 court, any community service, screening program, treatment  
3 program or DWI school ordered by the court, the offender shall  
4 be sentenced to not less than an additional forty-eight  
5 consecutive hours in jail. Any jail sentence imposed pursuant  
6 to this subsection for failure to complete, within a time  
7 specified by the court, any community service, screening  
8 program, treatment program or DWI school ordered by the court  
9 or for aggravated driving while under the influence of  
10 intoxicating liquor or drugs shall not be suspended, deferred  
11 or taken under advisement. On a first conviction pursuant to  
12 this section, any time spent in jail for the offense prior to  
13 the conviction for that offense shall be credited to any term  
14 of imprisonment fixed by the court. A deferred sentence  
15 pursuant to this subsection shall be considered a first  
16 conviction for the purpose of determining subsequent  
17 convictions.

18 F. A second or third conviction pursuant to this  
19 section shall be punished, notwithstanding the provisions of  
20 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
21 three hundred sixty-four days or by a fine of not more than one  
22 thousand dollars (\$1,000), or both; provided that if the  
23 sentence is suspended in whole or in part, the period of  
24 probation may extend beyond one year but shall not exceed five  
25 years. Notwithstanding any provision of law to the contrary

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1 for suspension or deferment of execution of a sentence:

2 (1) upon a second conviction, ~~each~~ an  
3 offender shall be sentenced to a jail term of not less than  
4 seventy-two consecutive hours, forty-eight hours of community  
5 service and a fine of five hundred dollars (\$500). In addition  
6 to those penalties, when an offender commits aggravated driving  
7 while under the influence of intoxicating liquor or drugs, the  
8 offender shall be sentenced to a jail term of not less than  
9 ninety-six consecutive hours. If an offender fails to  
10 complete, within a time specified by the court, any community  
11 service, screening program or treatment program ordered by the  
12 court, the offender shall be sentenced to not less than an  
13 additional seven consecutive days in jail. A penalty imposed  
14 pursuant to this paragraph shall not be suspended or deferred  
15 or taken under advisement; and

16 (2) upon a third conviction, an offender shall  
17 be sentenced to a jail term of not less than thirty consecutive  
18 days and a fine of seven hundred fifty dollars (\$750). In  
19 addition to those penalties, when an offender commits  
20 aggravated driving while under the influence of intoxicating  
21 liquor or drugs, the offender shall be sentenced to a jail term  
22 of not less than sixty consecutive days. If an offender fails  
23 to complete, within a time specified by the court, any  
24 screening program or treatment program ordered by the court,  
25 the offender shall be sentenced to not less than an additional

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1 sixty consecutive days in jail. A penalty imposed pursuant to  
2 this paragraph shall not be suspended or deferred or taken  
3 under advisement.

4 G. Upon a fourth or subsequent conviction pursuant  
5 to this section, an offender is guilty of a fourth degree  
6 felony, as provided in Section 31-18-15 NMSA 1978, and shall be  
7 sentenced to a jail term of not less than six months, which  
8 shall not be suspended or deferred or taken under advisement.

9 H. Upon any conviction pursuant to this section, an  
10 offender shall be required to participate in and complete,  
11 within a time specified by the court, an alcohol or drug abuse  
12 screening program and, if necessary, a treatment program  
13 approved by the court. The requirement imposed pursuant to  
14 this subsection shall not be suspended, deferred or taken under  
15 advisement.

16 I. Upon a first conviction for aggravated driving  
17 while under the influence of intoxicating liquor or drugs  
18 pursuant to the provisions of Subsection D of this section,  
19 as a condition of probation, an offender shall be required to  
20 have an ignition interlock device installed and operating for a  
21 period of one year on all motor vehicles driven by the  
22 offender, pursuant to rules adopted by the bureau. Unless  
23 determined by the sentencing court to be indigent, the offender  
24 shall pay all costs associated with having an ignition  
25 interlock device installed on the appropriate motor vehicles.

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1 If an offender drives a motor vehicle that does not have an  
2 ignition interlock device installed on the motor vehicle, the  
3 offender may be in violation of the terms and conditions of his  
4 probation.

5 J. Upon a first conviction for driving while under  
6 the influence of intoxicating liquor or drugs pursuant to the  
7 provisions of Subsection A, B or C of this section, as a  
8 condition of probation, an offender may be required to have an  
9 ignition interlock device installed and operating for a period  
10 of one year on all motor vehicles driven by the offender,  
11 pursuant to rules adopted by the bureau. Unless determined by  
12 the sentencing court to be indigent, the offender shall pay all  
13 costs associated with having an ignition interlock device  
14 installed on the appropriate motor vehicles. If an offender  
15 drives a motor vehicle that does not have an ignition interlock  
16 device installed on the motor vehicle, the offender may be in  
17 violation of the terms and conditions of his probation.

18 K. Upon any subsequent conviction pursuant to this  
19 section, as a condition of probation, a subsequent offender  
20 shall be required to have an ignition interlock device  
21 installed and operating for a period of at least one year on  
22 all motor vehicles driven by the subsequent offender, pursuant  
23 to rules adopted by the bureau. Unless determined by the  
24 sentencing court to be indigent, the subsequent offender shall  
25 pay all costs associated with having an ignition interlock

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1 device installed on the appropriate motor vehicles. If a  
2 subsequent offender drives a motor vehicle that does not have  
3 an ignition interlock device installed on the motor vehicle,  
4 the subsequent offender may be in violation of the terms and  
5 conditions of his probation.

6 L. In addition to any other penalty imposed  
7 pursuant to the provisions of this section, a motor vehicle  
8 operated by a subsequent offender while under the influence of  
9 intoxicating liquor or drugs shall be subject to seizure,  
10 forfeiture and disposal. The provisions of the Forfeiture Act  
11 shall apply to the seizure, forfeiture and disposal of the  
12 motor vehicle.

13 [~~L.~~] M. In the case of a first, second or third  
14 offense under this section, the magistrate court has concurrent  
15 jurisdiction with district courts to try the offender.

16 [~~M.~~] N. A conviction pursuant to a municipal or  
17 county ordinance in New Mexico or a law of any other  
18 jurisdiction, territory or possession of the United States that  
19 is equivalent to New Mexico law for driving while under the  
20 influence of intoxicating liquor or drugs, and that prescribes  
21 penalties for driving while under the influence of intoxicating  
22 liquor or drugs, shall be deemed to be a conviction pursuant to  
23 this section for purposes of determining whether a conviction  
24 is a second or subsequent conviction.

25 [~~N.~~] O. In addition to any other fine or fee

1 [which] that may be imposed pursuant to the conviction or other  
2 disposition of the offense under this section, the court may  
3 order the offender to pay the costs of any court-ordered  
4 screening and treatment programs.

5 [0-] P. As used in this section:

6 (1) "bodily injury" means an injury to a  
7 person that is not likely to cause death or great bodily harm  
8 to the person, but does cause painful temporary disfigurement  
9 or temporary loss or impairment of the functions of any member  
10 or organ of the person's body; and

11 (2) "conviction" means an adjudication of  
12 guilt and does not include imposition of a sentence."

13 Section 3. EFFECTIVE DATE. --The effective date of the  
14 provisions of this act is July 1, 2003.

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